

1994

# Ralph Meikle v. Reva Huntington, as Personal Representative Huntington, Deceased : Brief of Appellant

Utah Court of Appeals

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Roth, Nelson, Chipman & Quigley; Linda Roth; Attorney for Respondent.

A.W. Lauritzen; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

RALPH MEIKLE,  
Plaintiff and Appellant.

\*

\*

940576-CA  
Case No. 910000792

-v-

\*

REVA HUNINGTON, as  
Personal Representative  
HUNTINGTON, Deceased.  
Defendant and Respondent,

\*

\*

\*

Priority No. 15

BRIEF OF APPELLANT

APPELLANT FROM THE JUDGMENT OF THE FIRST DISTRICT COURT, IN  
AND FOR THE CACHE COUNTY, STATE OF UTAH, THE HONORABLE GORDON J.  
LOW, PRESIDING.

UTAH COURT OF APPEALS

UTAH

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940576

A.W. LAURITZEN

610 North Main

P.O. Box 171

Logan, Utah 84321

ATTORNEY FOR APPELLANT

ROTH, NELSON, CHIPMAN, & QUIGLEY  
Linda Roth, Attorney at Law  
136 South Main Street, Suite 910  
Salt Lake City, Utah 84101  
ATTORNEY FOR RESPONDENT

**FILED**  
Utah Court of Appeals

NOV 10 1994

Marilyn M. Branch  
Clerk of the Court

IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

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A.W. LAURITZEN  
610 North Main  
P.O. Box 171  
Logan, Utah 84321  
ATTORNEY FOR APPELLANT

ROTH, NELSON, CHIPMAN, & QUIGLEY  
Linda Roth, Attorney at Law  
136 South Main Street, Suite 910  
Salt Lake City, Utah 84101  
ATTORNEY FOR RESPONDENT

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

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RALPH MEIKLE,		
Plaintiff and Appellant,	*	Case No. <u>940576-CA</u>
	*	
-v-		
	*	Priority No. <u>15</u>
REVA HUNTINGTON, as		
Personal Representative	*	
of BILL HUNTINGTON, Deceased.	*	
Defendant and Respondent.	*	

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STATEMENT OF JURISDICTION

Jurisdiction to hear this appeal is vested in the Supreme Court of the State of Utah, pursuant to Utah Code Annotated, section 78-2-2 (3) (j) (supp.,1992), which states:

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(j) orders, judgments, and decrees of any court of record, which the Court of Appeals does not have original appellate jurisdiction.

Pursuant to the rule making power of the Utah Supreme Court this matter has been designated as one to be heard by the Utah Court of Appeals.



#### ISSUES PRESENTED FOR REVIEW

1. Was the respondent entitled to Summary Judgment as a matter of law? The standard of review is one of determining the correctness of the ruling of the trial court with respect to a motion for summary judgment. Apache Tank Lines v. Cheney, 706 P. 2d 217, 220 ( Utah 1993).

2. Must the appellant assume the burden of proof to demonstrate negligence when the moving party provides some evidence which might support the affirmative defense of "sudden incapacity." The appropriate standard of review would require that all facts as established and inferences drawn therefrom could rationally support no other conclusion than that sought by the moving party and therefore the appropriate standard of review is one of correction of error since the Appellant challenges the application of the law by the trial court. Bowen v. Riverton City, 656 P 2 434 (Utah 1982) Durham v. Margetts, 571 P 2 1332 ( Utah 1977).

3. Sudden incapacity is an affirmative defense in any event and must be supported by a preponderance of the evidence but if appellant presents any credible evidence or if there are inferences which might lawfully be drawn from the evidence presented, the motion for summary judgment must fail as a matter of law, since the

standard of review is whether applicable law was applied correctly by the trial court. State v. Pena, 869 P 2 932 (Utah 1994).

4. When the undisputed facts raise an inference of negligence, a motion for summary judgment, in light that inference, should not be granted as a matter of law, whether or not any evidence is marshalled to support that inference. Goodrich v. Blair, 646 P.2 890 (Ariz. App. 1992).

5. Violation of a traffic law, outside of narrowly drawn exceptions, is deemed to be negligence per se and at the level of summary judgment the standard of review is that of correction of error. Goodrich v. Blair, (supra)

6. With respect to a motion for summary judgment the burden of proof regarding the sudden incapacity defense, which as a matter of law resides with the appellant, does not, upon presentation of some evidence to support it, shift to the Appellant. Goodrich v. Blair, 646 P.2 890 (Ariz. App. 1982).

#### DETERMINATIVE LAW

Interpretation of the following statutes and rules will be determinative of the issues presented:

(1) Rule 56 (c), Utah Rules of Civil Procedure which provides that:

Summary judgment shall be rendered if the record demonstrates that:

(c) there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Doubts or uncertainties concerning issues of fact properly presented, or the nature of inferences to be drawn from the facts, are to be construed in a light favorable to the party opposing the summary judgment.

(2) U.S.C. 41-6-46, (1) 1953 as amended mandates that;

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or a railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(3) U.S.C. 41-6-53 (1) (a) 1953 as amended, provides in pertinent part that a violation occurs ---"[upon] failure to keep to the right", exceptions to the rule are given but none are applicable to this case.

(4) U.S.C. 41-6-69 (1)(a) 1953 as amended

A person may not turn a vehicle or move right or left upon a roadway or change lanes until the movement can be made with reasonable safety and an appropriate signal has been given.

#### STATEMENT OF THE CASE

(1) This case arose as a result of an automobile collision from which appellant brought an action in negligence in the District Court for Cache County Utah; after a petition for an interlocutory appeal from a pretrial ruling not pertinent here was denied. Respondent brought a motion for summary judgment which was granted and appellant appeals from the order dismissing the claims of appellant for damages.

(2) On October 31, 1987 the appellant and respondent, each driving their own motor vehicles, were involved in an automobile collision.

(3) The collision occurred at a time when no special or adverse conditions of traffic or weather, road conditions or visibility were operative.

(4) The respondent's automobile, without signaling, turned from its lane of travel, crossed the center line and traversed into the oncoming lane of traffic, colliding with the Appellant's automobile, which had taken appropriate evasive action.

(5) Before he could be taken from the scene the respondent died. Immediately prior to the collision, Appellant Ralph Meikle noted that the respondent "-- [Appeared to be] asleep or something, laying back in his seat."(TR. P 11 L. 1-5).

(6) The respondent had a history of heart problems and had, at some remote time, undergone an open heart surgical procedure which involve coronary bypass. (autopsy report P.3, para.5)

(7) Three days prior to the accident, on October 28, 1987 the respondent's doctor, Dr. David Beckstead, examined the respondent and stated by way of affidavit ( affidavit of Dr. David Beckstead P.2,(4) L.3), that in his opinion the "coronary disease was completely stable" and that the respondent was "asymptomatic."

(8) Reva Huntington, the respondent's wife, supports the evidence that the respondent was asymptomatic by stating,---"[that the respondent] did his normal chores around the house and ate a good lunch. After that he decided to take his car to Logan for service. ---[And that]---he was current on his medications and suffering from no unusual conditions at the time he left the house." (affidavit of Reva Huntington P.1 (2), L. 2-4).

(9) The autopsy report establishes that there were "abrasions and broken leg bones" consistent with the theory that the respondent braced was for impact. [Affidavit of Dr. Timothy Woods, (P.1 (3), L. 1-3)];

(10) The appellant sustained extensive injuries to his back and shoulders.

#### POINTS ON APPEAL

Point I: The Respondent, on the facts of this case, is not entitled to Summary Judgment.

Point II: The Appellant does not have the burden of proof with respect to the defense of "sudden incapacity."

Point III: The sudden incapacity defense is an affirmative defense and respondent must, by marshaling all of the evidence, establish that the facts support no other explanation or excuse for the unlawful conduct of respondent save "sudden incapacity."

#### ARGUMENTS

Point I: The Respondent, on the facts of this case, is not entitled to Summary Judgment.

(11) The Trial Court granted summary judgment on the insupportable finding that the respondent (Bill Huntington) having suffered a "sudden incapacity", possibly a heart attack, while driving his vehicle, was not negligent and therefore owed no duty to the appellant Ralph Meikle. The trial court viewed Bill Huntington's sudden incapacity as an unavoidable accident in that it was unforeseen and unanticipated and beyond his conscious control.

(12) The Appellant contends that the Respondent, as a matter of law, was not entitled to Summary Judgment. The Utah Supreme Court in WEBSTER v. SILL, 675 P. 2d 1170 (Utah 1983) observed:

"Under Rule 56(c) of the Utah Rules of Civil Procedure, summary judgment shall be rendered if the record demonstrates that:

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Doubts or uncertainties concerning issues of fact properly presented, or the nature of inferences to be drawn from the facts, are to be construed in a light favorable to the party opposing the summary judgment. (cases cited)

(13) The Trial Court erred in granting summary judgment in favor of the respondent in that there are factual issues which have not been resolved by the proceedings had to date. In State v. Pena 869 P 2d 932 (1994). The Utah Court observed that;

"For purposes of appellate review of trial court's determination of law "correctness" means that the appellate court decides matter for itself and does not defer in any degree to trial judge's determination of law.

In the abstract, effect of a given set of facts is question of law and thus one on which appellate court owes no deference to trial courts determination.

(14) In Pena (supra), the Supreme Court employed the following definition of factual issues:

"Factual questions are generally regarded as entailing the empirical, such as things, events, actions, or conditions happening, existing or taking place, as well

as the subjective, such as state of mind." Pena, supra at P. 2d at 935 ( citing Ronald R. Hofer, Standards of Review- Looking Beyond the Labels, 74 Marq. L. Rev. 231,236 (1991)

(15) Appellant contends that the weight given to the operative facts and the inferences which might be drawn on account of the weight assigned are not the province of the Trial Court and consequently, in ignoring that principle, the trial court erred in granting summary judgment in favor of the respondent. It is still very much an open question as to whether Bill Huntington had a heart attack and it is further an open question, even if he did have a heart attack, did that heart attack necessarily produce sudden incapacity? There is a further unanswered question, assuming there was a heart attack, did it occur prior to, during or after the accident?

(16) In the autopsy report (at page 2, para.6 and 7), there are notations of abrasions to Huntington's hands and the presence of broken leg bones which suggest, that Bill Huntington braced himself for impact. In an affidavit by Dr. Timothy Woods we find at, (P.1 para. (3), L. 1-3)the following,

"Over the past three years, I have seen numerous motor vehicle accident victims with complicated extremity injuries. Fractures similar to those described in the



autopsy report of respondent Bill Huntington are commonly seen in conscious automobile trauma victims."

(17) Inasmuch as the Respondent was the movant for summary judgment in this matter, the facts and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the Appellant. The Utah Supreme Court in reviewing the case of, Apache Tank Lines, Inc. v. Cheney, 706 P. 2d 614 (Utah 1985) observed:

Summary judgment should be granted with great caution in negligence cases. Williams v. Melby, 699 P. 2d 723 (Utah 1985). Issues of negligence ordinarily present questions of fact to be resolved by the fact finder. It is only when the facts are undisputed and but one reasonable conclusion can be drawn therefrom that such issues become questions of law. FMA Acceptance Co. v. Leatherby Insurance Co., 594 P. 2d 1332 (Utah 1979). Likewise, proximate cause is usually a factual issue and in most circumstances will not be resolved as a matter of law. Unigard Insurance Co. v. City of Laverkin, 689 P. 2d 1344 (Utah 1984).

(18) It has been said that the Court should use great caution when granting summary judgment in a negligence action, HARRIS v. UTAH TRANSIT AUTH., 671 P.2d 217 (Utah 1993). The standard enunciated in Harris (supra) at P.220 is as follows;

Accordingly, summary judgment is generally improper on the issue of negligence and only in clear-cut cases, with the exercise of great caution, should a court take the issue of negligence from the province of the jury.

(19) The appellant opposed summary judgment because the respondent had failed to meet its burden necessary to establish that the Respondent was entitled to Summary Judgment as a matter of law. The questions as to whether Bill Huntington lost consciousness at or prior to the time of the accident and questions as to why Bill Huntington was unconscious if, in fact, he was, or if he had merely fallen "asleep or something" (TR. P. 11, L. 3-5) were sharply controverted as was the contention that the respondent, in the accident sequence, had not violated Utah Law

(20) As stated in WYCALIS v. GUARDIAN TITLE, 780 P.2d 821,824 (Utah App. 1989), cert. denied, 789,P.2d 33 (Utah 1990). The court held that;

When determining if summary judgment is proper, we view all relevant facts, including all inferences arising from the facts, in the light most favorable to the party opposing the motion.

**Point II: The Appellant does not have the burden of proof on the Respondent's "sudden incapacity defense."**

(21) In a hearing on April 12, 1994, at the trial level the residing judge observed; (TR. P7 L.6)

"--- the issue is that we'll say this man was unconscious just prior to the accident. Can an unconscious man be guilty of negligence for violation (pause) for what appears to be a violation of the statute or do you have to prove the negligence which caused him to be unconscious? It seems to me that the burden of proof may

be upon you to say he was in that condition as a result of negligence."

(22) The appellant contends that, the opinion of the Trial Judge notwithstanding, the burden of proof did not shift to Appellant with respect to the Respondent's "sudden incapacity defense" upon the presentment of some evidence that the Respondent was unconscious; certainly driving while fatigued or inattentive might well support a finding of negligence.

(23) The California Court of Appeals in Ford v. Carew & English, 89 Cal. App. 2d 199, 200 P. 2d 828 at 831 (1949) observed:

Appellant relies greatly on Waters v. Pacific Coast Dairy, Inc., supra, 55 Cal. App. 2d 789, 131 P 2d 588, for her contention that respondent failed to meet the burden placed upon them by the res ipsa doctrine. In that case a truck driver was on the wrong side of the highway when he struck the victim. This violation of the Vehicle Code raised an inference of negligence. The jury found for appellant, and on appeal the judgment was affirmed. Appellant here quotes the opinion in the Waters case as though it were authority for the proposition that as a matter of law respondents there failed to dispel the presumption of negligence. Actually the decision in the Waters case was that it was for the jury to determine whether or not the presumption had been dispelled, and that the jury found that it had not been dispelled. In that case the driver claimed that the accident was caused by his becoming unconscious at the wheel. At first he examined him immediately and for some time after the accident assured him his heart was all right. He was positive he did not go to sleep, and was equally positive that he had become unconscious. But the respondents made no explanation of what could have caused him to become unconscious, the burden of showing which the court held to be on the respondents. The court held

that both the question of whether the driver was telling the truth as to the cause of the accident and whether the proof of respondents as to the cause of the attack, if he had one, and whether such attack could have been anticipated, overcame the presumption raised by the doctrine of res ipsa loquitur, were questions of fact for the jury.

(24) The undisputed facts in the instant case established that the Respondent, Bill Huntington, turned onto and crossed opposing lanes of traffic and struck the Appellant's vehicle causing injury. These violations of Utah Law raise an inference of negligence and cast upon the Respondent the burden of proof, under the res ipsa doctrine, to dispel the presumption of negligence attaching to a finding of violation of law.

The Arizona Court of Appeals in Goodrich v. Blair, 646 P.2 ed 890 at 892 ( Ariz. App. 1982) observed:

The sole defense to Blair's liability at trial was that Mr. Blair had suffered from a "sudden incapacity" and was, therefore, not liable for his conduct which would otherwise be negligent per se. Appellants contended that the sudden incapacity defense was taken on both sides of the issue, and the matter was submitted to the jury under the instruction in question on this appeal which we quote "However, the driver of an automobile is not negligent when he becomes suddenly stricken by an unforeseen cause which makes him lose control of his automobile even if then violates a statute". For this defense to apply, you must find from the evidence that:(1) Mr. Blair lost control of his automobile because of some physical incapacity; and, (2) The physical incapacity, which caused Mr. Blair to lose control of his automobile, was of the kind that he should not reasonably foresee would occur at that time.

(25) The respondent is unable to apply this two pronged test to the case at hand because it cannot be established, as a matter of law, that the operator of the motor vehicle suffered some physical incapacity nor can it be established by the respondent that the physical incapacity was the kind that the operator of the motor vehicle should not have reasonably foreseen as likely to occur at the time relevant to this case.

(26) The instant prior to impact the appellant recalled," I think he (respondent Bill Huntington) was either asleep or whatever, laying back in the seat." (TR. P.11, L. 3-5) This statement became a source of speculation by the respondent (and by the Trial Judge) (TR. P.7, L. 6) that the respondent had suffered a heart attack. Conversely, just prior to the accident, on October 28,1987 the respondent was examined by his physician, Dr. David Beckstead and was found to be healthy and showing no indication that a heart attack was imminent. (affidavit of Dr. Beckstead P.2,(4),L.3).

(27) Likewise, the autopsy report does not support the contentions of respondent. The report at page 3 para.5 states;

No hemorrhage is seen. The chambers and valves bear the usual size and positional relationships with no evidence of out-flow obstruction.

(28) The death certificate concludes that the immediate cause of Respondent's death was from of injuries sustained in an accident wherein the decedent suffered multiple injuries to his torso and legs. The Death Certificate also noted other significant conditions-contributing to death, but not related to immediate cause given as "Atherosclerotic Cardiovascular Disease." The autopsy report, therefore, cannot be construed as establishing heart attack, it only establishes a condition, which might relate to a heart attack, and explain such an attack, if one occurred. The autopsy report is not sworn to nor was any Affidavit in support of the Autopsy Report filed with the trial court.

(29) The autopsy report, at p. 5 para 2, without foundation, offers the conjecture that

"Investigation indicates that the decedent apparently lost consciousness prior to the accident and failed to take evasive action."

Appellant can find no support in the record for this gratuitous afterthought.

(30) The respondent has the burden of proof to show that the accident resulted from a sudden illness or attack and loss of consciousness and control and that such was unanticipated and unforeseen. Nothing in the record establishes that contention, by competent evidences, even as a prima facia matter.

(31) The issues of negligence, the origins of the physical incapacity, if any, and whether the alleged incapacity could have been foreseen are questions of fact for the jury.

(32) Conversely it is undisputed, at this point in the litigation, that the Respondent, Bill Huntington, drove on the wrong side of the road in violation of statute and caused an accident resulting in injury to the Appellant. Those undisputed facts raise an inference that the respondent was negligent and indeed, those facts, establish negligence, per se; see Ford v. Carew and English, (supra at P 831); Wherein the nuances of the doctrine of negligence per se are more fully explored.

(33) As the case of REES v. ALBERTSON, 587 P. 2d 130 points out;

"--- questions relating to negligence and proximate cause are generally for the fact-trier, court or jury to determine. A party should not be deprived of the privilege of having such an adjudication on his claims unless it appears that even upon the facts claimed by him he could not establish a doubt about the matter, it should be resolved in favor of permitting the party to go to trial."

**Point III:** The sudden incapacity defense is an affirmative defense and respondent must, by marshaling all of the evidence, establish that no reasonable view of the facts support any other explanation for the event than sudden incapacity.

(34) The sudden incapacity defense requires that the Respondent suffered some sudden and unforeseen episode and it's rapid onset occurred while he was driving, resulting in incapacity which caused him to become unable to control his vehicle. These facts, if found, in the minds of the jury, must still negate all negligence and any duty owed to the appellant; in essence the jury must find the event to be an unavoidable accident.<sup>1</sup>

(35) It is the appellant's contention that the Respondent cannot, by marshaling of the available evidence, sustain the burden of proof to a point where trial is not required. As in any affirmative defense, "sudden incapacity" must be proved by the proponent, and in a motion for summary judgment, proved to a veritable certainty.

(36) The respondent does not enjoy, either by judicial decision, or as a consequence of the law with respect to the weight of evidence, sufficient support to establish that the Respondent suffered an unanticipated heart attack to the point of incapacity.

(37) In summary, all available evidence indicated that the physical condition of Bill Huntington, was sound. The Respondent's

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<sup>1</sup> But see cases holding that the giving of a jury instruction on unavoidable accident is error.



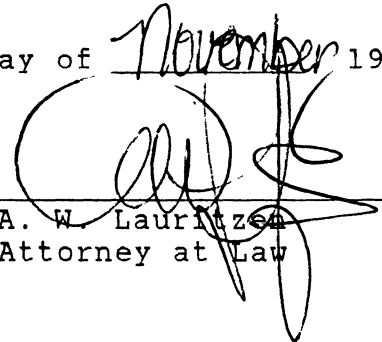
doctor as well as his wife provide this evidence by stating that Respondent manifested, just prior to the accident, no symptoms of illness.

(38) Respondent presents no evidence that Mr. Huntington had suffered from symptoms or relevant heart problems since the time of his surgery nor that he was, at any pertinent juncture, experiencing relapse or renewal of the cardiac disease diagnosed and treated at a remote time in his life.

#### CONCLUSION

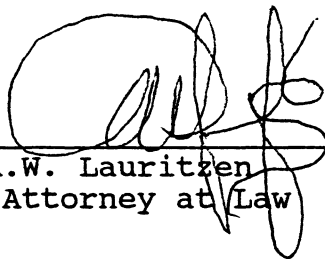
The Appellant respectfully submits that the Respondent has failed, as a matter of law, to meet the burden necessary to enjoy a grant of Summary Judgment because there remain genuine issues of fact which should be resolved by a jury upon a trial had on the merits.

Respectfully submitted this 8th day of November 1994.

  
A. W. Lauritzen  
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November 1994, three true and correct copies of the forgoing Appellant Brief for Ralph Meikle, was sent to Linda Roth, Attorney at Law, of Roth, Nelson Chipman, & Quigley, 136 South Main Street, Suite 910, Salt Lake City, Utah 84101 by hand delivery.



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A.W. Lauritzen  
Attorney at Law

## SECTION II

## APPENDIX

## ARTICLE 6

### SPEED RESTRICTIONS

#### **41-6-46. Speed regulations — Safe and appropriate speeds at certain locations — Prima facie speed limits — Rulemaking — Emergency power of the governor.**

(1) A person may not operate a vehicle at a speed greater than is reasonable and prudent under the existing conditions, giving regard to the actual and potential hazards then existing, including when:

- (a) approaching and crossing an intersection or railroad grade crossing;
- (b) approaching and going around a curve;
- (c) approaching a hill crest;
- (d) traveling upon any narrow or winding roadway; and
- (e) special hazards exist due to pedestrians, other traffic, weather, or highway conditions.

(2) If no special hazard exists, and subject to Subsection (5) and Sections 41-6-47 and 41-6-48, the following speeds are lawful:

- (a) until January 1, 1993, 20 miles per hour when passing a school building or its grounds during school recess or while children are going to or leaving school during opening or closing hours unless a physical barrier prevents access to the highway from the school building or its grounds;
- (b) 25 miles per hour in any urban district;
- (c) 65 miles per hour on highways where this speed limit does not impair the ability of the state to qualify for federal highway funds; and
- (d) 55 miles per hour in other locations.

(3) Except as provided in Section 41-6-48.5, any speed in excess of the limits provided in Subsection (2) is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

(4) The Transportation Commission shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, governing size and location of physical barriers provided for in Subsection (2).

(5) The governor by proclamation in time of war or emergency may change the speed limits on the highways of the state.

**History:** C. 1953, 41-6-46, enacted by L. 1978 (2nd S.S.), ch. 9, § 1; 1987, ch. 138, § 45; 1987 (1st S.S.), ch. 1, § 1; 1991, ch. 44, § 1; 1992, ch. 91, § 3.

**Repeals and Reenactments.** — Laws 1978 (2nd S.S.), ch. 9, § 1 repealed former § 41-6-46, as last amended by L. 1978, ch. 34, § 1, relating to speed regulations, and enacted present § 41-6-46.

**Amendment Notes.** — The 1991 amendment, effective April 29, 1991, designated the former second sentence of the introductory paragraph of Subsection (2) as present Subsection (3), rewrote Subsection (2)(a), added Subsection (4), redesignated former Subsection (3) as present Subsection (5), and made corre-

sponding reference changes and changes in punctuation and style throughout the section.

The 1992 amendment, effective April 27, 1992, added "until January 1, 1993" at the beginning of Subsection (2)(a); added the exception at the beginning of Subsection (3); and made a stylistic change.

**Legislative Intent.** — Laws 1987 (1st S.S.), ch. 1, § 2 states the legislative intent that all sections of the Utah highways that qualify under § 41-6-46(2)(c) for the 65 miles per hour speed limit be posted at 65, subject to the provisions of §§ 41-6-47 and 41-6-48 regarding reasonable and safe speed limits.

**Cross-References.** — Municipal regulations, § 10-8-30.

Reckless driving, § 41-6-45.

**ARTICLE 7**  
**REGULATIONS APPLICABLE TO DRIVING**  
**ON RIGHT SIDE OF HIGHWAY,**  
**OVERTAKING, PASSING AND**  
**OTHER RULES OF**  
**THE ROAD**

**41-6-53. Duty to operate vehicle on right side of roadway**  
**— Exceptions.**

(1) On all roadways of sufficient width, a vehicle shall be operated upon the right half of the roadway, except:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement;

(b) when an obstruction requires operating the vehicle to the left of the center of the roadway, but the operator shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portions of the highway within a distance constituting an immediate hazard;

(c) on a roadway divided into three marked lanes for traffic under the applicable rules; or

(d) on a roadway designed and signposted for one-way traffic.

(2) On all roadways a vehicle proceeding at less than the normal speed of traffic under the existing conditions shall be operated in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

**History:** L. 1941, ch. 52, § 43; C. 1943, 57-7-120; L. 1949, ch. 65, § 1; 1975, ch. 207, § 14; 1987, ch. 138, § 52.

**NOTES TO DECISIONS**

**ANALYSIS**

**Backing.**

**Bicycle and truck.**

**Effect of passing from right to center.**

**"Half of the roadway" construed.**

**Instructions.**

**Negligence.**

**Presumptions.**

**Question for jury.**

**Violation as evidence of negligence.**

**Cited.**

**Backing.**

Statutes requiring that vehicles keep to right have no applicability to backing. *Naisbitt v. Eggett*, 5 Utah 2d 5, 295 P.2d 832 (1956).

**Bicycle and truck.**

The driver of a truck who was on right side of street and was not on, near to, or approaching a crossing where both vehicles and pedes-

trians might pass either or both ways had the right to relax his vigilance and was not required to do more than to maintain such lookout as would prevent his colliding or coming in contact with anyone on his side of street. *Richards v. Palace Laundry Co.*, 55 Utah 409, 186 P. 439 (1919).

**Effect of passing from right to center.**

While in case a street or highway is not used by others one may drive on any part thereof, yet, when a motorist or bicyclist passes from right to left of the center of the street, he loses some of his rights, and he may not be heard to complain of the conduct of those who are on the proper side of street to the same extent as though he also were on the proper side. *Richards v. Palace Laundry Co.*, 55 Utah 409, 186 P. 439 (1919).

In action by bicyclist for personal injuries sustained as result of collision with automobile

**41-6-68. Moving a vehicle — Safety.**

A person may not move a vehicle which is stopped, standing, or parked until the movement may be made with reasonable safety.

**History:** L. 1941, ch. 52, § 55; C. 1943, 57-7-132; L. 1987, ch. 138, § 67.

## NOTES TO DECISIONS

**Evidence sufficient.**

In action for damages arising out of collision between motorcycle and truck, evidence was sufficient to support jury's finding that defendant, in violation of this section, moved his

truck onto highway, from point where truck was parked on shoulder of highway, before such movement could be made with reasonable safety. *Spackman v. Carson*, 117 Utah 390, 216 P.2d 640 (1950).

## COLLATERAL REFERENCES

**Am. Jur. 2d.** — 7A Am. Jur. 2d Automobiles and Highway Traffic § 282.

**C.J.S.** — 60A C.J.S. Motor Vehicles § 334.  
**Key Numbers.** — Automobiles ⇨ 173(8).

**41-6-69. Turning or changing lanes — Safety — Signals — Stopping or sudden decrease in speed — Signal flashing — Where prohibited.**

(1) (a) A person may not turn a vehicle or move right or left upon a roadway or change lanes until the movement can be made with reasonable safety and an appropriate signal has been given.

(b) A signal of intention to turn right or left or to change lanes shall be given continuously for at least the last three seconds preceding the beginning of the turn or change.

(2) A person may not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the operator of any vehicle immediately to the rear when there is opportunity to give a signal.

(3) The signals required on vehicles by Section 41-6-70 may not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" to operators of other vehicles approaching from the rear, or flashed on one side only of a parked vehicle except as necessary to comply with this section.

**History:** L. 1941, ch. 52, § 56; C. 1943, § 1; 1975, ch. 207, § 24; 1978, ch. 33, § 18; 57-7-133; L. 1949, ch. 65, § 1; 1971, ch. 96, 1987, ch. 138, § 68.

## NOTES TO DECISIONS

**ANALYSIS**

**Contributory negligence.**

Determination of "reasonable safety."

Effect of infant's capacity upon statutory duty.

Pedestrians.

Question for jury.

Stopping or suddenly decreasing speed.

Cited.

**Contributory negligence.**

Whether decedent's turn from an improper

position on the highway without signaling was contributory negligence was question for jury under facts of case. *Hansen v. Nicholas Moving & Storage, Inc.*, 451 F.2d 319 (10th Cir. 1971).

**Determination of "reasonable safety."**

Facts may be so clear and indisputable that it may be said as a matter of law that turn could not be made "with reasonable safety," and that defendant's act in turning was, as a matter of law, the sole proximate cause of the

scheduled appearance in another court on that date, but due to fact that there were no law or motion days between time objection was filed and trial date, objection was never heard, refusal to set aside default judgment entered when appellants failed to appear on trial date was an abuse of discretion. *Griffiths v. Hammon*, 560 P.2d 1375 (Utah 1977).

**Time for appeal.**

Under former Rule 73(h) the time for appeal from a default judgment in a city court ran

from the date of notice of entry of such judgment, rather than from the date of judgment. *Buckner v. Main Realty & Ins. Co.*, 4 Utah 2d 124, 288 P.2d 786 (1955) (but see *Central Bank & Trust Co. v. Jensen*, *supra*, and Rule 58A(d)).

Cited in *Utah Sand & Gravel Prods. Corp. v. Tolbert*, 16 Utah 2d 407, 402 P.2d 703 (1965); *J.P.W. Enters., Inc. v. Naef*, 604 P.2d 486 (Utah 1979); *Katz v. Pierce*, 732 P.2d 92 (Utah 1986).

COLLATERAL REFERENCES

**Brigham Young Law Review.** — Reasonable Assurance of Actual Notice Required for In Personam Default Judgment in Utah: *Graham v. Sawaya*, 1981 B.Y.U. L. Rev. 937.

**Am. Jur. 2d.** — 47 Am. Jur. 2d Judgments §§ 1152 to 1213.

**C.J.S.** — 49 C.J.S. Judgments §§ 187 to 218.

**A.L.R.** — Necessity of taking proof as to liability against defaulting defendant, 8 A.L.R.3d 1070.

Appealability of order setting aside, or refusing to set aside, default judgment, 8 A.L.R.3d 1272.

Defaulting defendant's right to notice and hearing as to determination of amount of damages, 15 A.L.R.3d 586.

Opening default or default judgment claimed to have been obtained because of attorney's mistake as to time or place of appearance, trial, or filing of necessary papers, 21 A.L.R.3d 1255.

Failure to give notice of application for default judgment where notice is required only by custom, 28 A.L.R.3d 1383.

Failure of party or his attorney to appear at pretrial conference, 55 A.L.R.3d 303.

Default judgments against the United States under Rule 55(e) of the Federal Rules of Civil Procedure, 55 A.L.R. Fed. 190.

**Key Numbers.** — Judgment ⇐ 92 to 134.

## Rule 56. Summary judgment.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and proceedings thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set

serve, the associate chief justice shall serve as chief justice. The chief justice may delegate responsibilities to the associate chief justice as consistent with law.

1990

#### 78-2-1.5, 78-2-1.6. Repealed.

1971, 1981

#### 78-2-2. Supreme Court jurisdiction.

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

- (i) the Public Service Commission;
- (ii) the State Tax Commission;
- (iii) the Board of State Lands and Forestry;
- (iv) the Board of Oil, Gas, and Mining; or
- (v) the state engineer;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction of a first degree or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

- (a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) matters involving legislative subpoenas; and
- (f) those matters described in Subsections (3)(a) through (d).

(3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings.

1994

#### 78-2-3. Repealed.

1986

#### 78-2-4. Supreme Court — Rulemaking, judges pro tempore, and practice of law.

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law.

1986

#### 78-2-5. Repealed.

1988

#### 78-2-6. Appellate court administrator.

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals. The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court.

1986

#### 78-2-7. Repealed.

1986

#### 78-2-7.5. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state.

1988

#### 78-2-8 to 78-2-14. Repealed.

1986, 1988

### CHAPTER 2a

#### COURT OF APPEALS

##### Section

- 78-2a-1. Creation — Seal.
- 78-2a-2. Number of judges — Terms — Functions — Filing fees.
- 78-2a-3. Court of Appeals jurisdiction.
- 78-2a-4. Review of actions by Supreme Court.
- 78-2a-5. Location of Court of Appeals.

#### 78-2a-1. Creation — Seal.

There is created a court known as the Court of Appeals. The Court of Appeals is a court of record and shall have a seal.

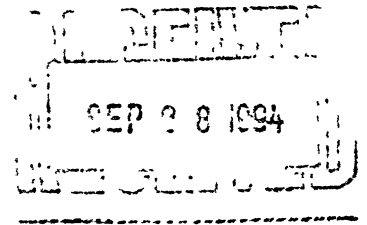
1986

#### 78-2a-2. Number of judges — Terms — Functions — Filing fees.

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as addi-



PREME COURT OF UTAH  
STATE OF UTAH  
SALT LAKE CITY, UTAH  
September 26, 1994



OFFICE OF THE CLERK

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A. W. Lauritzen  
Attorney at Law  
610 N. Main  
P. O. Box 171  
Logan, UT 84321

Ralph Meikle,  
Plaintiff, Appellant,  
and Cross-Appellee,  
v.  
Reva Huntington, as  
Personal Representative  
of the Estate of  
Bill Huntington,  
Deceased,  
Defendant, Appellee  
and Cross-Appellant.

No. 940355  
910000792

Pursuant to the authority vested in this Court, this case is poured-over to the Court of Appeals for disposition. All further pleadings and correspondence should be directed to that Court. The address is 230 South 500 East, Suite 400, Salt Lake City, Utah 84102.

Geoffrey J. Butler  
Clerk

Name: HUNTINGTON, Bill

Case No. 87-1148

described below. There is a vertically oriented 27 cm scar in the inner aspect of the right calf. No tattoos are seen. Examination of the feet reveals no abnormalities.

The back, anus, and genitalia are without injuries or abnormalities. The penis is uncircumcised.

#### EVIDENCE OF INJURY

##### MULTIPLE BLUNT FORCE INJURIES:

Examination of the face reveals multiple lacerations and abrasions. There is a small area of abrasion just above the left eyebrow with a small area of abrasion on the left upper eyelid. There is a horizontally oriented laceration measuring 7 x 2 cm with scant bleeding in the surrounding tissues. This is oriented over the bridge of the nose extending from the right cheek onto the left cheek. On the lateral right cheek are areas of abrasion with minimal bleeding. Examination of the chin reveals a 1 x 0.6 cm laceration with minimal bleeding. There are abrasions on the chin and proximal portions of the right jaw. Internal examination of the head reveals no evidence of significant subgaleal contusion, skull fracture, or internal injury to the brain or surrounding structures.

External examination of the chest reveals faint irregular contusion involving central portions of the chest bilaterally in an area 26 x 24 cm maximally. Over the sternum and upper right chest are irregular areas of abrasion, some of which have a patterning consistent with the weave of the decedent's religious garments. Abrasions measure to 5 x 6 cm in maximal dimensions. Internal examination of the chest reveals hemorrhage in the subcutaneous tissues as well as extensive rib fracturing with ribs 1 through 10 fractured anteriorly on the right side and ribs 1 through 9 fractured anteriorly on the left side. Posterior rib fractures involving the right first through fifth ribs are present and the third left rib. There are bilateral hemothoraces with 800 cc of blood on the right side and 650 cc of blood on the left side. Both lungs are collapsed and atelectatic in appearance. Examination of the mediastinal structures reveals a complete transection of the aorta in the region of the posterior arch of the aorta. Examination of the spinal column reveals a forward displacement of the seventh cervical vertebra with a small amount of surrounding hemorrhage. There is a separation fracture of the fourth and fifth thoracic vertebra without transection of the spinal cord. There is however, epidural and subdural bleeding in the surrounding thoracic spinal cord.

Examination of the abdomen externally reveals a tense and tympanic abdomen with multiple irregular areas of abrasion seen in the lower abdomen bilaterally and in the right upper quadrant. Abrasion measure to 4 x 2 cm maximally. Internal examination of the abdominal cavity reveals approximately 50 cc of blood within the lower pelvic region. There is a hepatic laceration oriented in the sagittal plane causing partial separation of the right and left lobes of the liver. This laceration measures 8 cm in maximal length and 3 cm in maximal depth. The spleen has multiple irregular lacerations measuring to 10 x 3 cm maximally. There is retroperitoneal bleeding in the lower abdomen bilaterally. Bilateral sacroiliac joint fractures are present as well as a fracture of the pubic ramus, just to the right of the midline.

Examination of the upper extremities reveals extensive contusion and crepitation of the dorsal aspects of the hands bilaterally. A 2 cm laceration is on the posterior aspect of the right index finger. No underlying fractures are detected.

The lower extremities are remarkable for fractures and lacerations. The right leg has a

Name: HUNTINGTON, Bill

Case No. 87-1148

fracture of the femur at a point 65 cm above the right heel. This is a comminuted fracture without perforation of the overlying skin. Examination of the right knee reveals a horizontally oriented 16 x 3 cm laceration. There is minimal bleeding around the edges of the wound. There are abrasions on the right shin measuring to 8 x 3 cm maximally. Examination of the left leg reveals a fracture of the femur at a point 64 cm above the level of the left heel. A 2 x 1 cm laceration is seen on the anterior aspect of the left thigh overlying the region of fracture. On the left shin is a vertically oriented 9 x 2 cm laceration with a vertically trailing abrasion proceeding upwards to the knee with overall dimensions of 20 x 2 cm. Multiple irregular abrasions are seen on the medial aspect of the left shin measuring to 15 x 11 cm maximally. The posterior aspect of the left thigh has an 8 x 2 cm laceration with a surrounding area of abrasion 10 x 9 cm. No fractures of the tibiae or fibulae are detected on the lower extremities.

#### INTERNAL EXAMINATION

**BODY CAVITIES:** The body is opened by the usual thoraco-abdominal, Y-shaped incision and the chest plate is removed. There are hemothoraces and hemoperitoneum as previously described. Adhesions are present in the pleural cavities between the base of the lungs and the diaphragm. Dense adhesions are present in the mediastinal structures with the pericardium adhered to the surface of the heart. All body organs are present in normal and anatomical position. The subcutaneous fat layer of the abdominal wall is 3 cm thick.

**HEAD:** (Central Nervous System). The brain weighs 1500 grams. The scalp is reflected. The calvarium of the skull is partially removed. The dura mater and falx cerebri are intact. There are no epidural or subdural hemorrhages present. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels are intact. Coronal sections through the cerebral hemispheres reveal no lesions. Transverse sections through the brain stem and cerebellum are unremarkable. Examination of the spinal cord reveals subdural and epidural hemorrhage as previously described in the thoracic region.

**NECK:** Examination of the soft tissues of the neck, including strap muscles, thyroid gland and large vessels, reveal no abnormalities. The hyoid bone and larynx are intact.

**CARDIOVASCULAR SYSTEM:** The heart weighs 620 grams. The pericardial surfaces have dense adhesions with essential elimination of the pericardial space. Examination of the subpericardial tissues reveals numerous coronary artery by-pass grafts in place. No thrombosis or other occlusion of the grafts is detected. Examination of the coronary arteries reveals right predominant pattern with extensive atherosclerosis with almost complete occlusion seen in the right and left coronary arterial systems. Sectioning of the myocardium reveals focal tan-gray scar tissue in the anterior left ventricular wall. No hemorrhage is seen. The chambers and valves bear the usual size and positional relationships with no evidence of out-flow obstruction. The aorta and its major branches arise normally and are remarkable for calcific atherosclerosis throughout the thoracic and abdominal aorta. There is injury as previously described. The vena cava and its major tributaries return to the heart in the usual distribution and are free of thrombi.

**RESPIRATORY SYSTEM:** The lungs weigh 420 and 350 grams, right and left, respectively. The lungs are collapsed bilaterally. Examination of the pleural surfaces reveals wrinkled pleural surfaces with extensive anthracotic pigment staining bilaterally. There are adhesions in the inferior surfaces of the lungs bilaterally. The cut surfaces of the lungs have mild to moderate emphysema apically. No consolidations or other focal

Name: HUNTINGTON, Bill

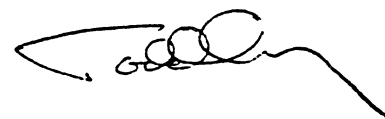
Case No. 87-1148

PATHOLOGIC DIAGNOSES:

- I. Multiple injuries.
  - A. Multiple fractures of ribs, spinal column, sacroiliac joints, pubis, and femurs.
  - B. Aortic transection.
    - 1. Bilateral hemothoraces.
  - C. Multiple lacerations and abrasions of external surfaces.
  - D. Hepatic splenic laceration.
- II. Atherosclerotic cardiovascular disease.
  - A. Status post coronary artery by-pass grafting for severe coronary artery atherosclerosis.
- III. Fatty metamorphosis and early cirrhosis of liver.

OPINION: This 70-year-old white male, Bill Huntington, died as a result of multiple injuries received when he was involved in a motor vehicle accident. Contributory to the accident is severe atherosclerotic cardiovascular disease. Investigation indicates that the decedent apparently lost consciousness prior to the accident and failed to take any evasive action.

MANNER OF DEATH: Accident.



Todd C. Grey, M.D.  
Assistant Medical Examiner

TCG/pgs

11/17/87

4. Mr. Huntington came in for his last visit to me on October 28, 1987, at which time his coronary artery disease was completely stable and Mr. Huntington was asymptomatic. I advised him to continue taking his prescribed medications and return in two months.

5. To the best of my knowledge, Mr. Huntington had no reason to anticipate that he might suffer a heart attack while driving his vehicle.

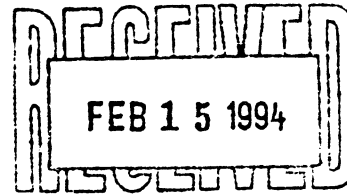
DATED this 11-19<sup>th</sup> day of November, 1993.

David B. Beckstead  
DAVID B. BECKSTEAD, M.D.

SUBSCRIBED AND SWORN TO before me by DAVID B. BECKSTEAD, M.D., on this 19<sup>th</sup> day of November, 1993.

Jane B. Smith  
NOTARY PUBLIC  
Residing in Preston, Idaho  
Commission Exp: 11/04/92

Linda L.W. Roth, USB No. 4133  
HANSON, NELSON, CHIPMAN & QUIGLEY  
Attorneys for Defendant  
136 South Main Street, Suite 910  
Salt Lake City, Utah 84101  
Telephone: (801) 364-3627



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IN THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY

STATE OF UTAH

-----

RALPH MEIKLE, : AFFIDAVIT OF REVA HUNTINGTON  
:   
Plaintiff, :   
vs. :   
:   
REVA HUNTINGTON, as Personal :   
Representative of the Estate of :   
BILL HUNTINGTON, Deceased, :   
:   
Defendant. : Civil No. 910000792

-----

STATE OF UTAH :   
: ss.   
COUNTY OF CACHE :

COMES NOW Reva Huntington, being first duly sworn, deposes  
and says:

1. She is the widow of Bill Huntington.
2. She was with him during the morning of October 31,  
1987, at which time he did normal chores around the house and ate  
a good lunch. After that, he decided to take his car to Logan  
for service.

COPY  
SHIPPED MAR 15 1994

A. W. Lauritzen  
Attorney for Plaintiff  
610 North Main  
P. O. Box 171  
Logan, Utah 84321  
Telephone: (801) 753-3391

IN THE FIRST DISTRICT COURT  
COUNTY OF CACHE, STATE OF UTAH

-----  
RALPH MEIKLE, )  
Plaintiff, ) AFFIDAVIT OF  
vs. ) TIMOTHY W. WOODS, M.D.  
BILL HUNTINGTON, et. al., ) Case No. 910000792 PI  
Defendants. )  
-----

STATE OF TEXAS )  
COUNTY OF BEXAR )

Timothy W. Woods, M.D., deposes and states as follows:

1. I am a physician duly qualified and licensed to practice medicine in the State of Utah.
2. I am a surgeon practicing at Brooke Army Medical Center, a level-one trauma center, in San Antonio, Texas.
3. Over the past 3 years, I have seen numerous motor vehicle accident victims with complicated extremity injuries.
4. Fractures similar to those described in the autopsy report of Defendant Bill Huntington are commonly seen in conscious automobile trauma victims.

1 me, over Mr. Meikle's signature, what if in fact he  
2 was asleep, as Mr. Meikle thought he was? (Pause.)  
3 Mr. Meikle says -- what did he say? "It looked like  
4 he was" --

5 MR. LAURITZEN: Asleep or whatever.

6 THE COURT: Asleep or whatever. What if he was  
7 asleep? I don't know about the slumped over part, but  
8 what if he was asleep? That's a good case for  
9 negligence.

10 MS. ROTH: Well, Your Honor, it depends on what  
11 the circumstances were.

12 THE COURT: I know, but that's a good starting  
13 place for arguing a case of negligence.

14 MS. ROTH: If there was some -- it would depend  
15 on what caused that. His wife has testified in her  
16 affidavit that it was a normal morning. He got up,  
17 had breakfast. Nothing unusual.

18 THE COURT: What time of day was it?

19 MS. ROTH: Midday, I believe.

20 THE COURT: One o'clock p.m.

21 MS. ROTH: As I say, I mean, that's basically  
22 what it requires is for the jury to speculate about  
23 what the cause was, other than what's established by  
24 the medical evidence, which I think the autopsy report  
25 does establish.



1 you just said and that's why I issued the memorandum  
2 decision. But as I looked at your withdrawal and  
3 started to think about this thing, the autopsy didn't  
4 conclude he had a heart attack, right?

5 MS. ROTH: I think it did, Your Honor.

6 THE COURT: Well, I got the impression that  
7 everything was consistent with him having a heart  
8 attack. Maybe I'm stating that too lightly.

9 MS. ROTH: I think it says contributory to the  
10 accident is severe arteriosclerotic cardiovascular  
11 disease.

12 MR. LAURITZEN: I have that.

13 MS. ROTH: And that the certificate of death,  
14 which is issued by Dr. Gray, who is the medical  
15 examiner, listed as "other significant conditions  
16 contributing to the death but not related to the  
17 immediate cause given in part one," which is the  
18 multiple injuries, is the arteriosclerosis.

19 Now, I think that one of the things that  
20 we kind of get side-tracked on is we're not saying he  
21 was dead at the time of the accident.

22 THE COURT: Right. Incapacitated.

23 MS. ROTH: And I don't think we need to establish  
24 that. I think what we have to establish is that the  
25 only evidence that we have is that he had a heart